IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1935 OF 2005

Bharatiya Kala Prasarini Sabha,
Pune and Ors. ... Petitioners

Versus

The Bank of Maharashtra and Ors. ... Respondents

Mr. J. Shekhar for Petitioner.

None for Respondents.

CORAM : F.I. REBELLO &
MRS R.S. DALVI,**JJ.**
DATED : NOVEMBER 23, 2005

P.C.

. Rule. Heard forthwith.

. The Respondents were served but have chosen not to appear. The decree was passed against the Petitioners herein. Based on the decree, the Bank moved Debt Recovery Tribunal for the Recovery Certificate which was issued on 25.11.2003. The Petitioners herein applied for review of that order. There was delay in filing the review. The Petitioners applied for condonation of delay. That came to be dismissed by order dated 6.12.2004. The

delay was of 4 months and 7 days. According to learned counsel for the Petitioner, considering the date of certificate, the delay is of two months and 7 days. Aggrieved by that, the petitioners preferred an appeal being Misc. Appeal No. 394 of 2004. That appeal came to be dismissed. Both the D.R.T. and D.R.A.T. have held that the cause shown does not amount to sufficient cause. On behalf of the Petitioners, their learned counsel states that they have intention of settling the matter and have put a proposal before the Bank for one time settlement considering the policy of Reserve Bank of India and offered sum of Rs.17,50,000/- as one time settlement and out of the same Rs.5 lacs. have already been accepted by the bank during the pendency of this petition.

. The contention of the Petitioner is that before the Civil Court society was represented by the persons not authorised to represent the society and it is in these circumstance that the office bearers were not aware of the proceedings. The question is whether on the facts as disclosed, the Petitioner can be given an opportunity to contest their review

application. Considering that the Petitioner already made an offer for one time settlement and out of that already paid Rs.5 lacs. in our opinion, the Petitioners have disclosed their bona fides. They have also preferred review application and have also file the present petition. In other words, they have disclosed their intention of contesting the proceedings. Once that be the case, in our opinion, the Petitioners must be given an opportunity of having their application for review considered on merits. In the light of that, impugned order dated 6.12.2004 of D.R.T. and the order dated 11.3.2005 of D.R.A.T. are set aside. The application for condonation of delay moved by the Petitioners before the D.R.T. is allowed. The D.R.T. is directed to hear the application for review filed by the petitioner herein on its own merits. The Petitioners to produce copy of this order before D.R.T. within two weeks from today. Petition disposed of. No order as to costs.

(F.I. REBELLO,J.)

(MRS. R.S. DALVI,J.)